



**MINUTES
CITY COUNCIL MEETING
August 16, 2022**

CALL TO ORDER

The meeting was called to order at 6:35 pm.

Present: Mayor Pro-Tempore: Jahn Dyvik; Council: Deirdre Kvale, Mike Feldmann, and Gina Joyce

Staff Present: City Administrator: Scott Weske; Fire Chief: James Van Eyll; City Clerk: Jeanette Moeller; and City Attorney: John Thames

Absent: Mayor: Charlie Miner (with prior notice)

PLEDGE OF ALLEGIANCE

MAYOR'S COMMENTS – LONG LAKE NEWS, MEETING REVIEW AND UPDATES

Mayor Pro-Tempore Dyvik offered the following comments and updates:

Mayor Pro-Tempore Dyvik noted that the Corn Days event appeared to be a big success and expressed his appreciation to the Long Lake Area Chamber of Commerce and everyone involved in the parade and the festival.

He shared development updates and mentioned that the first building permit for the Aava Vetta project had been issued that morning. Additionally, the developer for The Borough project closed on the purchase of the last home standing on Virginia Avenue and will begin the process for demolition and construction. He indicated he was hopeful that both of these projects would move forward during the fall.

The Economic Development Authority met prior to the Council meeting to discuss the City-owned property at 1905 W Wayzata Boulevard and voted to have a sign displayed in order to advertise the property's availability.

APPROVE AGENDA

A motion was made by Feldmann, seconded by Joyce, to approve the agenda as presented. Ayes: all.

CONSENT AGENDA

The Consent Agenda consisted of:

- A. Approve Minutes of August 3, 2022 City Council Work Session Meeting
- B. Approve Minutes of August 3, 2022 City Council Meeting
- C. Approve Vendor Claims and Payroll

A motion was made by Feldmann, seconded by Joyce, to approve the Consent Agenda, as presented. Ayes: all.

OPEN CORRESPONDENCE

Brian Miller, 295 Lakeview Avenue, stated that it was his understanding that Mayor Miner and Council members Dyvik and Kvale intend to run for re-election and wanted to thank them for their service to the City. He reflected that sometimes Council service may feel like a 'thankless' job, but as the City is in the middle of some fairly large projects, he feels 'switching horses midstream' would be detrimental to the City. He also gave thanks to the City staff for the work they have done on behalf of the City and its residents. He added that the corn was good at Corn Days and it was good to see the Church of St. George festival back in action. He noted that his one thought is that it would be nice to see more local businesses involved in the Corn Days Parade.

BUSINESS ITEMS

Approval of Collateral Assignment of TIF Funds

City Attorney Thames provided an overview of the request for approval of a collateral assignment of TIF funds related to The Borough development that has been taken over by Long Lake Townhomes, LLC. He explained that the collateral assignment of TIF funds would not relieve the developer of any obligations and is simply an assignment of the TIF funds in the event of developer default. Staff recommends approval of the collateral assignment agreement as proposed.

Mayor Pro-Tempore Dyvik recalled that there had been a fair amount of discussion around this issue at the earlier EDA meeting and asked Council member Kvale if she wanted to reiterate any of her thoughts from that meeting.

Council member Kvale shared her concerns about the broad scope of the assignment, discussed her interpretation of the word 'assignment', and gave an example that would concern her.

Thames agreed that there are various types of assignments and in this case, it is paraphrased as assignment of TIF funds in the event of the developer's default on the bank loan, which is primarily what the bank will be interested in.

Council member Kvale explained some of her concerns related to various scenarios, and Thames answered her questions regarding the different scenarios that were at issue for her. He stated that he was comfortable with the agreement's current wording and reiterated that it is simply consenting to assigning the TIF funds to another entity as collateral for the loan. The collateral assignment agreement would not release the developer from the developer obligations, because those are secured by agreements with the City and by financial sureties posted for the project.

City Administrator Weske noted that the TIF is only on the previously City-owned property portion of the project.

Thames suggested that Council Kvale consider that the site development agreement that she is concerned about contains primarily developer obligations, and the bank would not want that to be unilaterally applied to them. He stated that the bank had provided this assignment agreement form and he had amended it a bit. He reiterated that the agreement would not release the developer from any of their obligations.

Council member Kvale emphasized that she did not want the agreement to be broadly construed to release the developer in case there was a partial completion.

Thames read aloud from the Acknowledgement, Consent and Agreement of Authority and City portion of the document that stated, "...however, that nothing in the foregoing Assignment of Development Agreements will extend the deadline for curing defaults or otherwise limit the rights of

the Authority and the City to exercise their remedies as provided in the Development Agreement and in the other Agreements.”

A motion was made by Feldmann, seconded by Joyce, to adopt Resolution No. 2022-41, A Resolution Approving and Authorizing the Assignment of Development Agreements. Ayes: all.

Updates and Discussion Regarding Fire Department Matters

Mayor Pro-Tempore Dyvik reported that he and Mayor Miner have been meeting with Orono Council members Johnson and Seals to discuss various Fire Department matters. They have been meeting about once a week and he observed that the meetings have been going well overall, but indicated that he wanted to clarify a few things from last weeks Orono City Council meeting. He commented that he felt there was some misinformation or information that was left out by the Orono Council that would be pertinent for people to know. With regard to the purchase of the two command vehicles, it was simply presented by Orono that Long Lake just said, ‘no thank you’ to the offer for Orono to buy them. He stated that there was no mention that the Council had approved buying them under the terms of the existing contract. There is a contract that is still in place and he felt the consensus of the Long Lake Council was that it should still be honored until it is either ended or there is something different negotiated. He noted that for now, Orono has approved purchasing the two command vehicles on their own, and Long Lake has approved purchasing them through the terms of the contract, which he assumes Orono is unwilling to do. He voiced that he felt the information shared at the Orono meeting was not fully accurate and it was presented that buying the vehicles that way was ‘status quo’ and followed the current protocol, which he disagrees with. He noted that the precedent referenced was Rescue 21 and Engine 21 which are 100% owned by Orono. He explained that his understanding, after speaking with Fire Chief Van Eyll and City Administrator Weske, is that those two particular vehicles were purchased around 2004 before Fire Station 2 was built. Those two vehicles were an exception to how equipment has been purchased, but he added that Long Lake cannot force Orono to do anything.

Council member Joyce emphasized that there is a contract that outlines how capital equipment is to be purchased for the Fire Department and asked if it would be considered a breach of contract if Orono decided to move ahead outside of the contract.

Thames replied that technically that may be true because according to the contract they are obligated to pay their share of it.

Mayor Pro-Tempore Dyvik indicated that he believes the contract states that two cities have to agree and it has to be more than 50%, which would mean Orono has to be one of the agreeing cities.

Thames noted that one vehicle was already approved for purchase in 2021 and that purchase had experienced a delay. Orono’s proposed approach is not in compliance with the contract terms and there could be potential action taken in that case with an arbitration protocol.

Mayor Pro-Tempore Dyvik added that the second vehicle purchase had not been previously approved in any way, so his suggestion was to let the first vehicle go through as 100% Orono and let them buy it outside of the CIP; and then, moving forward, have all equipment be purchased under the terms of the contract until it expires or is renegotiated.

The Council discussed the current ‘handshake’ agreement that is in place for the loan of certain equipment.

Council member Joyce shared her reticence to allow Orono’s sole purchase of any vehicle to be used by the Fire Department because it would be like saying here is one more thing that they can turn around and say ‘well, we did it before’.

Mayor Pro-Tempore Dyvik explained that his thought was that their purchase of a vehicle would be something completely separated from the current contract, and if they wanted to loan the vehicle out, they could. He stated that if it was completely separated, his hope is that it would not set a precedent for anything going forward.

Weske observed that it would only be given as a loan because there is a perceived dire need, which he feels should not set a new precedent.

Mayor Pro-Tempore Dyvik commented that he just did not think that Orono would agree to buy both vehicles under the current contract terms because they will say that the first one was already approved to be bought by Orono alone. He noted that he probably should have asked more questions when that conversation initially came up at the Fire Advisory Board meetings in 2021. He stated that he wants the continued negotiations between Long Lake and Orono to be successful and believes that may mean doing something that isn't exactly what Long Lake wants, but that the City could allow for the sake of the negotiations going well. He added that the firefighters need the vehicles, and if there is posturing and debating back and forth, any purchase will be delayed.

The Council discussed the 2021 CIP plan/budget and approval.

City Clerk Moeller questioned whether the Council's current discussion may be too late, because Orono City Council took action at a meeting last week to approve outright purchase, and they may have already initiated the purchases.

The Council discussed the Letters of Intent that were sent for the two command vehicles, one from Orono and one from Long Lake.

Fire Chief Van Eyll confirmed that he had reached out to the Orono City Administrator for an update and to determine whether the dealership has been contacted, but he has not yet heard back from him because he has been on vacation.

Mayor Pro-Tempore Dyvik reiterated that he would prefer the purchases moved forward within the contract, but he did not feel Orono would agree to that, and the Fire Department needs the vehicles.

Thames clarified that what Orono has done is allocate funds to purchase two vehicles and noted that they will not be Fire Department vehicles, but City of Orono vehicles. He stated that Orono is proposing to let the Fire Department use the vehicles and the Fire Department can then decide to say yes or no to that offer, but it would have nothing to do with the CIP. He pointed out that the CIP is part of the life blood of the Fire Department and the contract has not expired, which means Orono is not permitted to just stop contributing to the CIP and just start buying stuff for themselves even if they let the Fire Department use their items.

Mayor Pro-Tempore Dyvik added that he has explained that understanding to them, and they just do not seem to see it that way.

Council member Kvale asked if it may be a good idea for a letter to be sent to Orono on Long Lake's behalf from City Attorney Thames.

Mayor Pro-Tempore Dyvik reiterated his earlier suggestion to let the first vehicle purchase go through as 100% Orono and let them buy it outside of the CIP and then, moving forward, have all equipment be purchased under the terms of the contract until it expires or is renegotiated. He stated that he felt that if the City pushes hard on this, it will be a setback in the negotiations.

Council member Kvale observed that it wouldn't seem like Long Lake had any negotiating power if they simply told Orono that it was okay to not follow the contract anymore.

Mayor Pro-Tempore Dyvik stated that he feels that he has made it clear that his position is that they have to adhere to the contract until it is over or renegotiated.

Weske commented that if the conversations are going so well, he questioned why Orono would insist on buying vehicles with 100% ownership. He recalled that the Orono Council members that supported 100% ownership of both vehicles are on the negotiating committee.

Mayor Pro-Tempore Dyvik noted that he was not going to defend their actions, but he thought perhaps they were just trying to keep the momentum going forward because the purchase of one of the vehicles was already approved in the 2021 CIP.

Van Eyll agreed and reflected that the concern was that if the purchase decision ended up going back and forth between the Councils, there would be a time delay and the dealer may just sell to someone else waiting in the wings.

Council member Kvale agreed with Mayor Pro-Tempore Dyvik's suggestion to allow them to purchase one of the vehicles at 100% ownership and noted that it may push them to formal acceptance of having to go before the Council because it would be a donation.

Mayor Pro-Tempore Dyvik emphasized that the vehicle use would not be a donation.

Council member Kvale mentioned she felt it would end up being a donation for use of the vehicle, which should have acceptance and terms.

Van Eyll clarified that there could be an agreement for use of the vehicle like the current 'handshake' agreement. He noted that the one vehicle title will be in the City of Orono's name and they will also insure the vehicle, so there should be some official agreement for the Fire Department's use of it.

Council member Kvale expressed the importance of making sure there is a formal agreement and procedure for accepting the loan of a vehicle for use to document that the arrangement was entered into outside of the existing contract, which is in place until 2025.

Mayor Pro-Tempore Dyvik noted that he will continue to push that detail in the negotiations that the terms of the contract are to be followed until it expires or is renegotiated, because it is legally binding.

Council member Joyce stated that she wants to make sure that Long Lake is not the only one compromising in this situation.

Council member Feldmann commented that he feels the 'good faith' is only moving in one direction right now because Orono has been saying things that are feeding into a narrative that is ridiculous, which he finds very frustrating. He added that if negotiations are going well, that is good, but he is concerned that Orono is just planning to bail on the CIP.

Mayor Pro-Tempore Dyvik noted that he believes the City can draw a line in the sand if needed and indicate that Long Lake will not continue negotiations until Orono agrees that the current contract must be adhered to.

Council member Kvale added that she would support that approach.

Council member Joyce questioned how the City can protect itself from purchase issues continuing to happen, because Long Lake did not agree to Orono buying vehicles for the Fire Department at 100% their ownership, yet they turned around at their meeting and approved doing so anyway.

Thames responded that any further issues would be call for initiating arbitration.

Moeller noted that regardless of the outcome of the current vehicle purchase situation, it seems like it may be worth Long Lake documenting on paper to the other party that moving forward this method of purchases cannot continue because it was not intended to set a precedent for future purchases, but was simply permitted on a one-time basis to arrive at a solution for a Fire Department that is in need.

The Council discussed some of the larger items coming up in the CIP over the next five years.

Council member Kvale expressed concern that by continuing to operate outside the terms of the existing agreement, the City may be essentially waiving the terms of the agreement that they are supposed to be operating under. She pointed out that it seems a bit like Long Lake is bending more than Orono is and it feels as though Orono has some sort of agenda. Their actions make it seem like they are just terminating the contract early, placing Long Lake in a bad negotiating position because they end up kind of being steamrolled.

Council member Joyce stated that she agreed and feels this completely erodes trust and respect.

Mayor Pro-Tempore Dyvik indicated that he understands Council members Kvale and Joyce and has mentioned to Orono Council representatives that if Orono is not going to abide by the current contract, why should Long Lake trust that they will abide by any future agreement.

Council member Kvale added that she understands that Mayor Pro-Tempore Dyvik feels that he and Mayor Miner are making progress with their negotiations, but there was one comment by an Orono Council member in the past that basically said that the idea was that they are taking over the Fire Department and Long Lake just has to understand that.

Mayor Pro-Tempore Dyvik responded that he believes they have moved off of that stance and noted that statement was made by someone who is not on the negotiation committee.

Council member Kvale inquired what the current mindset was from Orono, because it seems to her, and probably to Council member Joyce as well, that their mindset is not collaborative at this point.

Council member Joyce confirmed she would completely agree with Kvale's statement.

Council member Feldmann inquired if the 2021 CIP approval included fraction ownership of the vehicle and if it was approved by all the cities.

Mayor Pro-Tempore Dyvik clarified that the budget was approved by all the cities, but after that, it was presented at the Fire Advisory Board that Orono would buy it 100%. He noted that a year ago, Orono probably truly thought they would be taking over the Fire Department.

Moeller reflected that it is confusing that the message the negotiating meetings have been conveying is that the cities want to work together; however, the message that is coming out of meetings at the Council action level is that Orono is going to buy their own fleet.

Weske reiterated that the two Orono Council members who serve on the negotiating committee were two of the three votes that approved not following the contract terms and going ahead with the 100% purchase of both vehicles at last week's meeting.

Council member Feldmann stated that there appears to be a lot of dissonance between what is being said by Orono representatives at the negotiating meetings and what happens and is stated at their Council meetings.

Mayor Pro-Tempore Dyvik stated that he has expressed that same opinion in an email to the Orono Council and he is sure they will discuss it at the upcoming negotiations meeting.

Moeller emphasized that Long Lake does want to purchase this equipment, just under the terms of the existing contract.

Mayor Pro-Tempore Dyvik added that he communicated to the Orono Council representatives that Long Lake is 100% in support of buying these vehicles to support the needs of the Fire Department, and agreed that he felt that point was left out of Orono's messaging.

The Council discussed the ongoing negotiations with Orono and if both parties were coming to the table in good faith or if it was just one sided.

Council member Joyce stated that she personally thinks that there needs to be some legality involved and suggested that the City have City Attorney Thames write a letter on their behalf stating, 'per the approved 2021 CIP, we are purchasing a command vehicle, per the existed contract,' and that they were also suggesting purchasing the second vehicle per the contract terms. She stated that if they refuse to do that, the options are arbitration; or, if they want to lend a vehicle to the Fire Department, there will be a legally binding agreement and not simply a handshake agreement between the parties. She added that she did not think the City's niceties were getting them anywhere with Orono.

Council member Kvale agreed that it would be a good idea to send a letter reminding Orono of what had been approved and agreed upon.

Van Eyll stated that nobody knows if they have gone ahead and purchased one or both of the command vehicles at this point. He reiterated that he had sent an email asking their City Administrator if they had made the purchase, but noted that his first day back from vacation was today, so he suspects his inbox was overrun with messages. He stated that he can also reach out to the dealer to see if he can get any information on the purchases.

Council member Kvale indicated that if Orono wants to offer use of one of the vehicles to the Fire Department, that would be fine; but there was one vehicle already approved in the CIP that should be purchased according to the agreement.

Council member Feldmann reiterated his worries about the precedent that would be set by their outright purchase of equipment for Fire Department use, and, for example, the thought that it would give them an out not to contribute to the CIP if they continue to just buy their own equipment and lend it out as they choose to. He indicated that there are 'teeth' in place under the current contract, but Long Lake needs to be willing to use them if Orono doesn't follow the contract terms.

Council member Joyce suggested that the City send a letter prepared by the City Attorney to Orono saying that Long Lake agrees that the vehicles should be purchased within the contract terms and anything outside of that will be handled through the arbitration process.

Mayor Pro-Tempore Dyvik indicated that Council member Joyce's proposed action would create a delay.

Council member Feldmann added that it would not create a delay for the first vehicle purchase that was already included in the CIP.

Council member Joyce asked what City Attorney Thames' thoughts were on the situation.

Thames concluded that it sounds like the Council would like to get some prompt communication out to Orono to indicate that, at a minimum, what the Council wants to do is go through the contract for the purchase of the 2021 vehicle. Getting that communication issued that would allow for discussions on Friday at the negotiating committee meeting, and would clear the air by stating, in writing, that at least one of the vehicle acquisitions needs to be followed through as a contemplated contract purchase.

Van Eyll clarified that the vehicle purchase was approved with the 2021 CIP budget for purchasing in 2022.

The Council discussed whether the communication from the City should come from City Attorney Thames, the Council, or City Administrator Weske.

Council member Kvale commented that she believes a letter coming from a lawyer tends to give it more credibility in terms of sticking to the obligations of the contract.

Council member Joyce agreed and explained that she felt the correspondence should highlight that an obligation is arbitration, if the contract is deviated from.

Thames noted that in deference to the progress being made by the negotiating team, it may be better to start with a bit of a different approach and make the point that this is a mandatory purchase per the contract and the City is expecting Orono to honor that. He added that they could outline the fact that they are willing to discuss how the second vehicle would be purchased, but would advise that those discussions take place before they purchase both vehicles. He noted that then, Mayor Pro-Tempore Dyvik and Mayor Miner can use Friday's negotiating team meeting to get clarity on this issue.

The Council discussed the content of the letter and the ongoing negotiations.

There was consensus of the Council to direct City Attorney Thames to send a letter to Orono stating one of the vehicles they were planning to purchase was approved through the 2021 CIP under the contract; that the second vehicle is for an unforeseen need now rather than next year; that the City is open to their offer of accepting their purchase of that, but that there would need to be a written agreement on the terms of use for the vehicle until the 2024 command vehicle comes up on the CIP plan; and that going forward, all purchases must adhere to the existing contract.

Mayor Pro-Tempore Dyvik noted that he also would want it clear that the second vehicle would not be identified as Long Lake Fire Department rolling stock and would belong to Orono. He explained that he did not want to blur the boundaries and wants it completely outside of the contract.

Council member Feldmann agrees with the notion of keeping things very separate because he remained concerned about precedent.

Thames suggested that if the CIP is being amended, the message could be that Long Lake is on board with purchasing both vehicles per the contract terms and if they are not interested in that and

want to own one, then the message can be that the 2021 vehicle was approved through the contract and if they want to buy a second vehicle and own it outright, they can do so. He commented that at the next Fire Advisory Board meeting, there could be discussion on whether the 2023 vehicle should be removed from the CIP and stated that Long Lake's expectation remains that all future CIP expenditures run through the contract terms.

Mayor Pro-Tempore Dyvik noted that Orono has already said no to the first option he presented. He stated that he sees this compromise as a test of their good faith.

Council member Feldmann stated that he thinks it needs to be understood that Orono buying 100% of vehicles would mean that Long Lake is giving up the option that should legally be Long Lake's per the contract.

Thames stated that he would suggest reiterating the first option, because it should still be an option.

A motion was made by Kvale, seconded by Joyce, to direct City Attorney Thames to draft a letter to the City of Orono outlining Council discussion that Long Lake intends to move forward with purchasing a command vehicle under the approved CIP from 2021 according to the contract; reiterating that the contract will not expire until 2025 and that all purchases should be conducted according to the contract terms; and that if Orono opts to purchase an additional command vehicle outside of the contract terms, the Long Lake Fire Department may accept use of it with a formal written agreement, but the understanding is that the vehicle would belong to the City or Orono and not be part of the Long Lake Fire Department rolling stock. Ayes: All.

Mayor Pro-Tempore Dyvik asked if there was any more business to discuss regarding the Fire Department.

Council member Kvale noted that she had a good time riding in the Long Lake Fire Studebaker at the Corn Days Parade.

Mayor Pro-Tempore Dyvik mentioned that it had been presented to him that during the parade, some people noticed the exclusion of Orono Council members and thought it would have been appropriate that they walk together alongside Long Lake to show that they were working towards a solution. He stated that he hopes that nobody was offended, because it was not an intentional slight to the Orono Council and was just continuing the tradition for Long Lake.

Council member Joyce noted that her understanding was that Orono was sent an application by the Long Lake Chamber of Commerce that was never filled out or returned to participate in the Corn Days Parade.

Mayor Pro-Tempore Dyvik reflected that the two cities are in a situation right now where they are trying to figure out what the future is for the Fire Department, and he thinks some people want to see that they are working something out.

Council member Feldmann noted that it is a partnership and asked if there was any concern expressed that Medina was not invited to walk in the parade.

Mayor Pro-Tempore Dyvik responded that Council member Feldmann made a good point, because many times, Medina has been left out of these discussions.

Moeller reminded the Council that the parade is an event sponsored by the Long Lake Area Chamber of Commerce and always has been. She stated that anyone, up to their cap of 50 parade floats, is welcome to sign up and participate.

Van Eyll reported that the Fire Department completed physical abilities tests on Monday night and everyone that took the test passed. He added that there are a few individuals who were unable to take the testing so they will need to complete their tests at a later date.

OTHER BUSINESS

Pavement Management Project - Council member Kvale asked if the streets in the Pavement Management Improvement Project scope, including Creekside Drive, will be graded soon. Weske responded that the contractor was supposed to be out working today. He explained that a gas line had been hit multiple times on Creekside Drive, which put a bit of a wrinkle into the schedule for that roadway. Van Eyll added that the gas line was mismarked by at least 10 feet, so the Fire Department spent about three hours out there on site.

Corn Days Review - Council member Joyce shared that she thought the parade and Corn Days events were awesome. She recalled that her family had moved to the City right after Corn Days in 2019 so this was her first opportunity to attend. She noted that she found Corn Days events to be very special and reflected that her family feels fortunate to live in this community because not many people get to have these kinds of experiences. She expressed her appreciation to the Church of St. George, Marty Schneider, and the Long Lake Chamber of Commerce for their work on Corn Days and the Corn Days Parade. She also thanked the Fire Department and Wayzata and Orono Police Departments for their involvement.

Appreciation to Election Judges - Moeller expressed her sincere gratitude to the City's election judges for their work on the recent Primary Election.

Street Lamp Posts - Mayor Pro-Tempore Dyvik asked if there was an update on when the missing Wayzata Boulevard W lamp posts would be installed. Weske was uncertain, but was aware that Public Works Director Diercks had spoken with the lamp post provider.

Carp Harvest Update - Council member Joyce reported that another carp pull from the box nets had been completed the prior week, but she had not seen the numbers yet. She mentioned that she would try to get more information for the next meeting and perhaps have someone from the Long Lake Waters Association come present more details about the pull.

ADJOURN

Hearing no objection, Mayor Pro-Tempore Dyvik adjourned the meeting by general consent at 8:38 pm.

Respectfully submitted,

Scott Weske
City Administrator